IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23-12-2004

Coram:
The Honourable Mr. MARKANDEY KATJU, Chief Justice
and
The Honourable Mr. Justice N.V. BALASUBRAMANIAN

W.P. Nos.37258 TO 37262 OF 2004

Trichy Prime Tannery
a partnership firm
rep. by its Managing Partner
Mr. P.G. Rajappa :: Petitioner (WP 37258 of 04)

M.K.M. Tannery
a partnership firm
rep. by its Managing Partner
Mr.Sajjit Ibrahim :: Petitioner (WP 37259 of 04)

M. Abdul Samadu
Prop. K.M.M. Tannery :: Petitioner (WP 37260 of 04)
Trichy.7.

Bestan Leathers Company
a partnership firm
rep. by its Managing Partner
A. Sajjit Ibrahim :: Petitioner (WP 37261 of 04)

Vignesh Leather Co.
a partnership firm
rep. by its Managing Partner
S. Muthuselvan :: Petitioner (WP 37362 of 04)

:versus:

1. Tamil Nadu Pollution
Control Board
rep. by its Chairman, Chair Person,
Guindy,
Chennai 600 032

2. The Superintending Engineer
Tamil Nadu Electricity Board
Trichy :: Respondents in all WPs

Petitions under Art.226 of the Constitution, praying for Writ of Certiorari

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calling for the records relating to the order passed by the first respondent in its proceedings dated 16.11.2004 passed by the first respondent in its proceedings No. (1) HWM/TNPCB/F21042/Try/Tannery-V/03, dated 16.11.2004 (2) HWM/TNPCB/F21042/TRY/Tannery-IV/03, dated 16.11.2004 (3) T6-1/TNPCB/F21042/TRY/Tannery-IV/03, dated 16.11.2004 (4) HWM/TNCPB/F21042/TRY/Tannery-I/03, dated 16.11.2004 and (5) HWM/TNPCB/F21042/TRY/Tannery III/03, dated 16.11.2004, respectively and quash the same.

For Petitioners :: Mr. G. Rajagopalan
Senior Counsel for
M/s. G.R. Associates
For Respondents :: Mrs. Rita Chandrasekaran
(for R1)
Mr. G.Vasudevan
Government Pleader (for R2)

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ORDER

(Passed by the Honourable The Chief Justice)

This common order shall dispose off all the above five writ petitions as the issue involved therein is identical.

2. Petitioners in these writ petitions are engaged in the business of tannery and their tannery-units are located in Pudukottai Main Raod, Sembattu, Trichy. Petitioner by these writ petitions pray for quashing the order dated 16-11-2004 passed by the first respondent. By that order, the first respondent, exercising powers delegated to it by the Central Government under Sec.5 of the Environment (Protection) Act, 1986 (hereinafter referred to as 'the Act'), has ordered the closure of the petitioners' units as well as stoppage of electricity service connection with immediate effect.

3. Heard Shri G. Rajagopalan, learned senior counsel for the petitioners and Mrs. Rita Chandrasekaran, learned standing counsel for the first respondent Board.

4. Though a number of contentions have been urged by the learned senior counsel for the petitioners, these writ petitions, in our opinion, are liable to succeed on the very first ground, viz. that the impugned orders were passed against the petitioners without giving them an adequate opportunity of hearing and hence there was breach of principles of natural justice. This contention is expressly taken in paragraph 8 of the affidavit as well as in ground (a) of the grounds of the writ petition.

5. A counter-affidavit has been filed by the first respondent Board wherein, it is alleged in paragraph 6 that several show cause notices were issued to the petitioners in the years 2000, 2002 and 2003. We may point out that this allegation is as vague as it could be as it is bereft of the dates on which such notices were issued and no copies of the show cause notices

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were annexed to the counter-affidavit. However, Mrs. Rita Chandrasekan, learned standing counsel produced before us the copy of the show cause notice dated 20-3-2003 wherein it is mentioned that during the inspection of the petitioners' unit on 18-3-2003 certain shortfalls were noticed. In our opinion, this show cause notice dated 20-3-2003 has no relevance at all. Learned senior counsel for the petitioners submitted that the shortfalls mentioned in the notice dated 20-3-2003 had been removed by the petitioners. At any event, we are not concerned with the shortfalls found in the inspection held on 18-3-2003 but rather with the shortfalls noticed during the inspection held on 10-10-2004, as expressly mentioned in the impugned order dated 16-11-2004.

6. In the impugned order dated 16-11-2004, it is mentioned that when the petitioners' units were inspected by the Task Force of the first respondent Board on 10-10-2004 five shortfalls were noticed. It is pursuant to such an inspection that the present impugned orders were passed. In our opinion, after noticing the alleged shortfalls, it was incumbent on the first respondent Board to have issued a show cause notice to the petitioners pointing out the shortfalls found in their units in the inspection held on 10-10-2004 and asking them to show cause as to why appropriate action under law be not taken against them. It is evident that no such show cause notice was issued to the petitioners because the impugned order dated 16-11-2004 is a composite order not only mentioning the shortfalls found in the petitioners' units but also simultaneously directing the closure of their units and stoppage of electricity service connection. Obviously, this could not and should not have been done by one and the same order. The proper course of action for the first respondent Board was to have first issued a show cause notice to the petitioners, alleging the defects found in their units and giving them reasonable time to offer their explanation. This is the minimum requirement of the principles of natural justice and is also the requirement of Rule 4(3-a) and (3-b) of the Environment (Protection) Rules, 1986, which reads as follows:

> "4(3-a) The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.
>
> 4(3-b) Where the proposed direction is for the stoppage or regulation of electricity or water or any other service affecting the carrying on any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, as the case may be, and objections, if any, filed by the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rules (3-a) and (4) of this rule:
>
> Provided that no opportunity of being heard shall be given to

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the occupier if he had already been heard earlier and the proposed direction referred to in sub-rule (3-b) above for the stoppage or regulation of electricity or water or any other service was the resultant decision of the Central Government after such earlier hearing."

7. This country is governed by 'Rule of Law', and the principles of 'natural justice' are an integral part of it. The elementary principle of natural justice is *audi alteram partem i.e.* no adverse order should be passed against a party without giving that party an opportunity of hearing. In the present case, no such opportunity was given to the petitioners before the impugned order was passed. Hence, the impugned order is violation of the principles of natural justice and is, therefore, illegal. In *STATE OF ORISSA v. BINAPANI DEI* (AIR 1967 SC 1269), the Supreme Court, vide paragraph 12, observed as follows:

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

In the present case, the impugned order dated 16-11-2004 certainly involves civil consequences. By the expression 'order having civil consequences' is meant an order which affects the rights and liabilities of the person concerned. The impugned order dated 16-11-2004 certainly affects the rights of the petitioner under Art.19(1)(g) of the Constitution, viz. the right to carry on business and also other rights. Hence the impugned order could not have been passed without giving show cause notices to the petitioners before ordering the closure of their units.

8. In *MANEKA GANDHI v. UNION OF INDIA* (AIR 1978 SC 597), the above principle was reiterated by the Supreme Court and the observations made are as follows:

"The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the natural justice."

9. Similarly, in *RAGHUNATH THAKUR v. STATE OF BIHAR* (AIR 1989 SC 620) it was held as follows:

"that black-listing of a person in respect of business ventures has

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civil consequences for the future business of the person concerned and the person affected by such order has right of being heard and making representations against order even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order."

10. In *STATE GOVT. HOUSELESS HARIJAN EMPLOYEES' ASSOCIATION v. STATE OF KARNATAKA AND OTHERS* (2001 [1] SCC 610), it was held that even if there is no provision in the statute for giving opportunity of being heard to the person concerned yet such requirement should be read into the statutory provision unless excluded explicitly or by implication.

11. In *Misri Lal v. State* (1991 All.L.J. 1053), it was observed that before declaring an area as 'Slum Area' under U.P. Slum Areas (Improvement and Clearance) Act, 1962, opportunity of hearing should be given to the property owners in that area.

12. Learned standing counsel for the respondent Board invited our attention to the judgment of the Supreme Court in *Research Foundation for Science Technology National Resource Policy v. Union of India (W.P. No.657 of 1995).* We have perused the said judgment but we do not find any thing therein inconsistent with what we have stated above. Hence, the decision is of no assistance to her.

13 Before parting with the case, we would like to observe that orders directing closure of industrial units on the ground of environmental pollution, etc. should not be very readily passed. We have already observed in W.P. No.33528 of 2004 (O. Fernandes v. Tamil Nadu Pollution Control Board – order dated 17-12-2004) concerning 'Sethu Samudram Shipping Canal Project' that our national aim is to make India a powerful, modern industrial nation and that is only possible by rapid industrialisation. The industrialisation of our country should not be obstructed in the name of environment protection. Our main aim must be to rapidly industrialize, and protection of environment must be regarded as only incidental to this main aim and not itself the main aim. Unless we are industrialized, we will never get respect in the comity of nations and will not be able to promote the welfare of our people. Without industrialisation, our people shall also not be able to get work, education, medical aid, housing, etc. The massive unemployment in our country can also be eradicated by rapid industrialisation. Today the real world is cruel and harsh. It respects power, not poverty or weakness. Such power only comes from a high degree of industrialisation. The truth is that Indians, despite being an intelligent and industrious people, are not respected by Westerners, not because our skin is brown or black in colour, but because our country is poor. Nobody respects the poor. When the Chinese and Japanese were poor people they were derisively called 'yellow races' by the Westerners, but today they are highly industrialised and powerful

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nations, and now nobody dares to call them that. Similarly, if we wish to get respect in the world community we must make our country highly industrialised and prosperous. Also, industrialisation alone can generate the wealth we require for taking care of the welfare of our people, as is the mandate of the Directive Principle in our Constitution. Hence, orders directing closure of the industrial units on the ground of environmental protection should not be readily passed and should be passed only when the situation strongly warrants it, e.g. when there is strong evidence that the industrial unit is discharging highly dangerous and toxic effluents into the air and water and fails to implement the effluent treatment methods. Ordering closure of industrial units on minor grounds is not in the national interest, and it will also add to the unemployment.

14 For the reasons stated above, the impugned orders dated 16-11-2004 are quashed and the writ petitions are allowed. Connected W.P.M.P. Nos.44715 to 44724 of 2004 are closed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Jai

To:
1. The Chairman/Chair Person,
Tamil Nadu Pollution
Control Board,
No.76, Mount Road, Guindy,
Chennai 600 032

2. The Superintending Engineer
Tamil Nadu Electricity Board
Trichy

+ 5 ccs to M/s. G.R.Associates, Sr.Nos.57107 to 57111
+ 1 cc to Mrs.Rita Chandrasekaran,Advocate Sr.No.57178

SMK(CO)
KK

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